<u>TABLE OF CONTENTS</u>

VOLUME 1 of 2

SH 2355927/ FO 2385633

TABLE OF CONTENTS

VOLUME 2 of 2

SH 2355927/ FO 2385633

EXHIBITS

MISCELLANEOUS DOCUMENTS

Video Admonishment Form for Deputy [redacted]

Three (3) Compact Discs Containing Homicide Interviews of Witnesses

TABLE OF CONTENTS

ADDENDUM

SH 2355927/ FO 2385633

INTERNAL AFFAIRS BUREAU
INVESTIGATIVE SUMMARY

- ADDENDUM -

INCIDENT:	**On Duty Hit Shooting, Suspect Deceased**
IAB File Numbers:	**SH 2355927/ FO 2385633**
URN#:	**014-06662-2899-013**
DATE/TIME:	**May 26, 2014, 0947 Hours**
LOCATION:	**[redacted] Long Beach Boulevard, Long Beach**

On December 21, 2015, additional video footage of the Deputy Involved Shooting of Noel Aguilar was discovered by Los Angeles County Sheriff's Department Homicide Investigators, Karen Shonka and Wayne Holston. Due to the new video evidence, the criminal case related to the Deputy Involved Shooting, was re-opened for further investigation. Refer to Homicide Investigators supplemental reports **[EXHIBIT K]**, documenting their follow-up investigation pertaining to the recovery of said video evidence and interview of [redacted] the witness who filmed the incident, The new video footage was provided to IAB investigators and will be included in the IAB Addendum case book as **[EXHIBIT L]**.

DISTRICT ATTORNEY'S LETTER OF OPINION:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office reviewed the additional reports and video submitted by Detectives Karen Shonka and Wayne Holston relating to the shooting death of Noel Aguilar by Deputy [redacted] and Deputy Jose Ruiz. In their letter of opinion **[EXHIBIT M]**, dated April 7, 2016, Deputy District Attorney James Garrision concluded that the new evidence was consistent with the material originally submitted in 2015. The Office of the District Attorney maintained Deputies [redacted] and Jose Ruiz acted in lawful self-defense and defense of others and no further action would be taken.

REVIEW OF CASE FILE BY DEPARTMENT OF JUSTICE:

As a result of the new video footage depicting the shooting death of Noel Aguilar, the United States Department of Justice, United States Attorney's Office, notified the Los Angeles County Sheriff's Department in a letter **[EXHIBIT N]** dated January 4, 2016, that they, in conjunction with the Federal Bureau of Investigations, would also be reviewing the Sheriff's Department case file to determine if federal prosecution was warranted.

On April 28, 2016, Brandon Fox, Assistant United States Attorney, Chief of the Public Corruption and Civil Rights Section, was contacted by IAB Investigators via e-mail, **[EXHIBIT O]** to determine if their review of the shooting death of Noel Aguilar was still on-going. Mr. Fox advised IAB Investigators that his office would not be conducting any further review of the incident, and had no objection to any administrative investigation occurring.

INVESTIGATION:

Video Recording

IAB Investigators reviewed the new video footage **[EXHIBIT L],** and found it to be consistent with the original video with the exception the angle was slightly different. The first several seconds of the new video footage captured conversation between Deputy [redacted] and Deputy Ruiz that was not captured in the original video.

INVOLVED EMPLOYEE STATEMENTS:

The following narratives are intended only as a synopsis of the interviews. Additional information and precise wording may be obtained by reviewing the digitally audio recorded interviews and verbatim transcriptions.

DETECTIVE JOSE RUIZ

On May 16, 2016, **Detective Jose Ruiz, #**[redacted] was interviewed by IAB Sergeant Kimberly Mendoza and Lieutenant Dennis Watters. The interview was audio recorded and transcribed under **Jobs #50025 and #50026.** Following is a summary of the interview.

Detective Ruiz was given an opportunity to view the new video footage of the incident after being given the video admonishment. He positively identified himself and Deputy [redacted] in the video. Detective Ruiz confirmed that he said to Deputy [redacted], "Is it a gun?" Deputy [redacted] confirmed there was a gun. Detective Ruiz then said to Suspect Aguilar, "If you fucking move bitch, I'm gonna kill you." Detective Ruiz said he made that statement to Suspect Aguilar to prevent him from retrieving a weapon.

DEPUTY [redacted]

On May 19, 2016, **Deputy** [redacted] **#**[redacted], was interviewed by IAB Sergeant Kimberly Mendoza and Lieutenant Dennis Watters. The interview was audio recorded and transcribed under **Jobs #50061 and #50062.** Following is a summary of the interview.

Deputy [redacted] was given an opportunity to view the new video footage of the incident after being given the video admonishment. He positively identified himself and Deputy Ruiz in the video. He heard Deputy Ruiz say to him, "Is it a gun?" Deputy [redacted] replied, "It's a gun, it's a gun." He believed the voice on the video that said, "If you fucking move bitch, I'm gonna kill you" was his own voice. Deputy [redacted] was asked if he was sure that was him and not Deputy Ruiz that made the statement. Deputy [redacted] said he was "almost positive" that he made that statement.



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY o District Attorney
JOHN K. SPILLANE o Chief Deputy District Attorney
JOSEPH P. ESPOSITO o Assistant District Attorney

SCOTT K. GOODWIN o Director

February 23, 2015

Captain Rod Kusch
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #14-0356
L.A.S.D. File #014-06662-2899-013

Dear Captain Kusch,

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the May 26, 2014, fatal shooting of Noel Aguilar by Los Angeles Sheriff's Department (LASD) Deputies [redacted] and Jose Ruiz. We have concluded that Deputies [redacted] and Ruiz acted in lawful self-defense and defense of others.

The District Attorney Command Center was notified of this incident on May 26, 2014. The District Attorney Response Team (DART), comprised of Deputy District Attorney Geoffrey Rendon and District Attorney Senior Investigator Richard McIntosh, responded to the scene, was given a walkthrough, and participated in witness interviews.

The following analysis is based upon reports, photographs, and recordings submitted to this office by LASD Homicide Investigators Karen Shonka and Wayne Holston. The voluntary statements of Deputies [redacted] and Ruiz were considered as part of this analysis.

FACTUAL ANALYSIS

On May 26, 2014, at approximately 9:45 a.m., LASD Deputies [redacted] and Jose Ruiz were on patrol near Long Beach Boulevard and East 69th Way in the City of Long Beach. The deputies were wearing Sheriff's Department uniforms and were traveling in a marked patrol car. [redacted] and Ruiz saw an individual, later identified as Noel Aguilar, riding a bicycle northbound on the east sidewalk of Long Beach Boulevard. The deputies wanted to conduct a stop of Aguilar, who looked in their direction and quickly turned eastbound on East 69th Way.

Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012-3210
(213) 974-3888
Fax: (213) 620-1208
WEBSITE: http://da.co.la.ca.us



Statement of Deputy Ruiz

Ruiz was driving the patrol car and followed Aguilar eastbound onto East 69th Way. Ruiz tried to cut Aguilar off at an alleyway just east of Long Beach Boulevard. Aguilar jumped off his bike and ran northbound across East 69th Way, into an apartment complex. Ruiz and [redacted] exited the patrol car and pursued Aguilar, who continuously reached for his waistband. Ruiz warned [redacted] that Aguilar might have a gun. [redacted] had exited the patrol car closer to Aguilar and was a short distance ahead of Ruiz. Ruiz was familiar with the apartment complex and knew that Aguilar would have to exit into an adjacent alleyway. Ruiz ran down the alleyway, intending to head Aguilar off. As expected, Aguilar entered the alleyway and looked at Ruiz, who was armed with his department-issued service weapon. Ruiz ordered Aguilar to, "Stop and show your hands!" Aguilar ignored Ruiz' commands and ran northbound through the alley. [redacted] entered the alley and both deputies pursued Aguilar.

[redacted] caught Aguilar and tackled him. Aguilar fell face first to the ground; both of his hands were underneath him, near his waist. [redacted] was laying on Aguilar's back. Ruiz came from behind and both deputies tried to pull Aguilar's hands from underneath him. Both deputies ordered Aguilar to, "Give me your arms!" Aguilar refused to comply and fought with the deputies. Aguilar tried to stand up; the deputies pushed him back to the ground.

[redacted] grabbed Aguilar's left arm and put it behind his back. Aguilar's right arm was underneath his body, near his waist. Ruiz placed his service weapon near Aguilar's head and ordered him to comply with the deputies' orders. Ruiz grabbed Aguilar's left hand. Aguilar continued to struggle and used his right arm to push himself up. Ruiz told Aguilar, "Stop or I'm going to shoot." Aguilar continued to try to get up. Ruiz tapped the side of his gun on the back of Aguilar's head and again told Aguilar to, "Stop!"

Ruiz placed his left knee on Aguilar's right bicep to control his arm. [redacted] placed a handcuff on Aguilar's left wrist, but Aguilar continued to struggle and tried to push himself up from the ground. Aguilar was off of the ground and was able to pull his right arm free. [redacted] yelled out, "Gun!" and Ruiz believed Aguilar was reaching for a weapon. Ruiz pointed his firearm at Aguilar's stomach and felt Aguilar grab his weapon. [redacted] yelled, "Gun, gun!" and Ruiz, believing Aguilar was retrieving a weapon and would shoot [redacted], fired his duty weapon once at Aguilar.[1] Aguilar's hand was still on Ruiz' gun and Ruiz fired a second time. Ruiz tried to fire a third time, but didn't hear or feel a shot fired.

[redacted] yelled out, "I've been shot, I've been shot!" Ruiz cleared his weapon and chambered a round and placed the gun near Aguilar's ribs. At the same time, [redacted] fired three times. Aguilar momentarily went limp then continued to struggle. Ruiz heard a "click," which he believed to have come from a weapon in Aguilar's possession. The deputies were able to handcuff Aguilar's right arm yet Aguilar continued to struggle.

---

[1] This shot struck [redacted] in the stomach.

[redacted] held Aguilar down and Ruiz saw blood on [redacted] uniform. Ruiz told [redacted] to sit down nearby. Ruiz saw a firearm on the ground, which he believed to have come from Aguilar.

Ruiz stayed on top of Aguilar until other deputies arrived.

Statement of Deputy [redacted]

[redacted] and Ruiz were on patrol, driving southbound on Long Beach Boulevard, when they saw Aguilar riding a bicycle northbound on the east sidewalk. Aguilar looked in the deputies' direction and accelerated. Ruiz made a u-turn and drove northbound, following Aguilar. Aguilar turned eastbound on East 69th Way; the deputies followed. Aguilar jumped off the bicycle and ran northbound across East 69th Way. The deputies exited their patrol car and chased Aguilar. Ruiz yelled out that Aguilar was armed with a gun. Aguilar' right hand was holding something secreted in his waistband. [redacted] was certain that Aguilar was armed with a gun.

[redacted] eventually caught up to Aguilar and tackled him. Both men fell to the ground. Aguilar's right hand was underneath his body, near his waist. Aguilar refused to move his hand from underneath him. Ruiz arrived and assisted [redacted] who continuously tried to pull Aguilar's right hand from his waist. [redacted] struck Aguilar's elbow with the butt end of his collapsible baton, but Aguilar would not relinquish control of his arm. [redacted] ordered Aguilar to give up his right arm. Aguilar refused to comply with [redacted] orders and pushed himself up onto all fours. [redacted] believed Aguilar was under the influence of drugs.

As the struggle continued, [redacted] located a handgun in Aguilar's waistband. Aguilar grabbed the gun, which became entangled in Aguilar's shorts, but [redacted] was able to remove it. [redacted] placed the handgun somewhere along his beltline. The deputies continued to struggle with Aguilar, who refused to comply with their orders.

At some point in the struggle [redacted] was shot once in the abdomen. [redacted] memory of the events immediately surrounding being shot are hazy, but he believed that Aguilar had shot him. [redacted] was in excruciating pain, felt there was a "fireball" inside his stomach, and thought he was going to die.

[redacted] heard Ruiz say, "Gun!" and believed that Aguilar either had obtained Ruiz' gun or that Ruiz was saying that Aguilar had a second gun. Upon hearing his partner, and believing that Aguilar was going to shoot him again, [redacted] shot Aguilar three times in the back from close distance.

[redacted] recalled handcuffing Aguilar's left wrist, but could not recall if he did that before or after being shot.

After being shot, [redacted] called out to onlookers for the address of the location. A female responded, but he could not hear what she said. [redacted] looked to two males on the second floor of a nearby building, who said, "Fuck you, you shot him in the back."



[redacted] and Ruiz were able to handcuff Aguilar and Ruiz told [redacted] to sit down. [redacted] stood up momentarily and collapsed. [redacted] recalled being taken to a hospital, where he lost feeling in his legs and started to lose consciousness. [redacted] sustained significant intestinal injuries from his gunshot wound and underwent surgery. [redacted] is still recovering from complications related to his injuries.

Investigators showed [redacted] a video recording captured on a cell phone by a witness. [redacted] had not seen the video previously. After viewing the video, [redacted] stated that he had no memory of Ruiz firing a second time and maintained that, at the time of the incident, he believed that Aguilar had shot him. Sometime well after the incident, [redacted] learned that he had accidentally been shot by his partner.

Statement of [redacted]

[redacted] was asleep in his bedroom when he heard a "bang" against a trash can below his window and the sounds of people screaming, wrestling and fighting. [redacted] looked outside and saw two deputies, [redacted] and Ruiz, chasing an individual, Aguilar. [redacted] yelled, "Stop! Get on the ground!" Aguilar ignored [redacted] orders and was trying to get away. [redacted] caught Aguilar and threw him against a brick wall at the end of the alley. Aguilar got away from [redacted] but was caught again a short distance away. Deputy Ruiz arrived and the deputies tackled Aguilar to the ground.

The deputies struck Aguilar and were trying to handcuff him. There was a struggle between the three men. Deputy Ruiz was holding a gun and told Aguilar, "You better stop or I'm gonna shoot you!" Ruiz placed his gun against Aguilar's head and said, "I'm gonna kill you." It appeared that Aguilar calmed down at that point. Ruiz holstered his handgun and was trying to handcuff Aguilar. As the deputies tried to secure the second handcuff, Aguilar started fighting again. Aguilar used his free hand to push his body up from the ground and pulled away from the deputies' grasp. Aguilar reached under his body as if he was "reaching for a gun or something." [redacted] heard a gunshot and [redacted] screamed, "I got shot, I got shot!" Both deputies were on top of Aguilar. Ruiz fired a shot at Aguilar, who screamed, "I'm shot, I'm shot!" [redacted] withdrew his firearm and shot Aguilar three times.

[redacted] saw [redacted] remove a gun from the area near Aguilar, but never saw Aguilar in possession of a gun. At the time [redacted] was shot, [redacted] heard [redacted] say, "I got the gun." After the second shot was fired, [redacted] threw the gun to his side, where it remained when [redacted] fired the three shots at Aguilar.

Shortly after [redacted] was awoken by the sounds of the altercation, he retrieved his cell phone and recorded portions of the incident. With [redacted] permission, investigators downloaded the video recording captured on his cell phone.



Additional Witness Statements

Several additional witnesses saw portions of the incident and provided statements consistent with what is depicted on the video and with the statements of the aforementioned witnesses. [redacted] was inside her apartment when she saw the deputies chasing Aguilar and yelling for him to stop. Aguilar ignored their commands and continued running. The deputies eventually caught Aguilar, a struggle ensued and all three men ended up on the ground. The deputies tried to handcuff Aguilar, but it appeared that he was too strong for them. The deputies ordered Aguilar to not move, but Aguilar ignored their commands and continued to struggle and scream "like a crazy person."

Aguilar got to his knees and had his arms under his body. [redacted] heard a gunshot and thought Aguilar shot [redacted]. [redacted] threw a gun to the ground. Aguilar continued to struggle with the deputies for a short period of time and [redacted] heard two or three additional gunshots. [redacted] moved closer and saw a gun on the ground, near Aguilar's feet. [redacted] had been shot and was bleeding.

Video Recording

[redacted] recorded a portion of the incident on his cellphone, from the vantage point of a [redacted] story window, directed downwards to ground level. For the entire video, the camera was held at an angle and the footage is seen in the upper left corner of the frame. The amount of video that is viewable varies throughout the video. At times, the deputies' bodies and Aguilar's body can be seen in full; at other times, there is a significantly smaller view of the individuals.

As the recording begins, the camera is directed at the floor of [redacted] residence, moves upward and is directed out of a window towards the ground below. Sounds of a struggle can be heard, including what sounds like heavy breathing. As the camera is directed to the involved individuals, [redacted] and Ruiz are on top of Aguilar near the rear bumper of a parked vehicle. Aguilar is facedown and [redacted] strikes Aguilar's right arm with his collapsible baton. [redacted] drops the baton and removes a pair of handcuffs from his utility belt. [redacted] is straddling Aguilar's lower legs; Ruiz is on a knee, hunched over Aguilar's right shoulder. Ruiz is facing away from the camera.

[redacted] places a handcuff on Aguilar's left wrist, which is positioned behind his back. Aguilar's right hand is on the ground, to his side. [redacted] pulls Aguilar's right wrist upward and towards his lower back, but is unable to secure the handcuff. Suddenly, Aguilar pulls his right arm away and tucks it under his body. Aguilar pushes himself up, gets to his knees and dislodges [redacted] who ends up slightly behind and to the left of Aguilar, hunched over Aguilar's upper left torso. The sound of a metallic object hitting the pavement is clearly heard.[2] [redacted] struggles to control Aguilar's right arm. It appears that [redacted] arms are around Aguilar's upper torso. Aguilar continues to struggle with the deputies and the camera pans slightly downward, significantly reducing the view of the incident. Only the legs and lower torsos of [redacted] and Aguilar are in

[2] Movements by Ruiz suggest it was Ruiz' service weapon that fell to the ground.



view. Ruiz cannot be seen, partially due to the vantage point of the camera and partially because of shadows being cast from the back of the parked car. Unintelligible words are spoken by one of the individuals that sound as if they include the word, "dropped."

Suddenly, a gunshot rings out.[3] [redacted] screams out, "Ah, I've been shot!" and groans in pain. The camera pans out and all three men can be seen. Aguilar is on his side, Ruiz has a knee on top of Aguilar's right leg and [redacted] is laying on Aguilar's upper body. The deputies yell, "Stop!" multiple times and other unintelligible words are spoken. Aguilar continues to struggle with the deputies. The three men are directly adjacent to the rear bumper of the car. Ruiz' right arm is resting on top of the rear bumper and Aguilar is directly behind the car. There is very little room to control Aguilar, who is laying on his side. Ruiz asks, "Where's the gun?" Aguilar says, "I didn't have it." [redacted] groans, "I got shot," and continues to moan in pain. At the same time, [redacted] removes a semiautomatic handgun from his waistband and presses it against the ground, trying to maintain his balance.[4] Aguilar says, "I didn't shoot nobody." One of the deputies replies, "You?" [redacted] says something unintelligible. Aguilar states, "I didn't shoot nobody." A deputy says, "Huh?" and Aguilar responds, "I didn't shoot nobody." [redacted] says something unintelligible and groans, "I got shot in the stomach."

Ruiz is holding his service weapon in his right hand and points it downward, at Aguilar's torso. Aguilar reaches up with his left hand and grabs Ruiz' gun. Aguilar and Ruiz struggle for control of the gun. [redacted] discards the handgun that he pulled from his waistband. Aguilar again states, "I didn't shoot nobody." One of the deputies says, "Stop fucking…" and Aguilar replies, "Come on, man, why you gotta (unintelligible) in me?" Ruiz pulls his service weapon away and appears to manipulate the safety on the firearm. Aguilar says something else that sounds like, "Say, I don't do it." The camera tilts slightly and, momentarily, only the lower torsos of each man can be seen. A second gunshot is heard.[5] At the time of the second gunshot, neither Aguilar's nor the deputies' hands can be seen in the video, based on the direction the camera is facing. Based on the statements of the deputies and forensic evidence, it is clear that the second shot was fired by Ruiz. At the time of the second gunshot, Aguilar is laying on his side and Ruiz is almost directly on top of him, prone across the length of Aguilar's body. [redacted] is on his knees, directly behind Aguilar's upper back. Based on the findings in the autopsy report, the second shot struck Aguilar in the left leg.

After the second shot is fired, at least one of the individuals can be heard grunting. As the camera pans away, showing a full view of all three individuals, Ruiz is still on top of Aguilar. Ruiz' right arm, still holding his service weapon, is near Aguilar's waist and Aguilar's right arm can be seen in the area where Ruiz was holding his service weapon. It appears that Aguilar partially rolls over and Ruiz' arm, with his weapon, is pinned between Aguilar's elbow and torso. [redacted] is pressed against Aguilar's upper back. [redacted] pulls himself up, rocks back and sits on his heels, removes his service weapon and fires three times directly into Aguilar's back.

[3] The gunshot is heard approximately 37 seconds into the recording.
[4] The gun that [redacted] removes from his waistband is the weapon he took from Aguilar.
[5] The second gunshot takes place 1 minute, 8 seconds into the recording, approximately 31 seconds after the first shot.



Approximately two and a half seconds pass between the second shot and the first of [redacted] shots.

[redacted] is grimacing, in obvious pain and cries out, "I got shot." Ruiz asks onlookers for the address. Initially, no one is willing to provide the address. Expletives are directed at the deputies. An unknown male yells, "You don't shoot him in the fucking back, you asshole! Fucking take it! You've got a fucking gun!"

Ruiz stays on top of Aguilar, who is in obvious pain and continues to thrash about on the ground. The deputies plead for the address and have difficulty broadcasting a call for assistance. Numerous individuals can be heard yelling different addresses and comments at the deputies. Eventually, several individuals call out addresses and locations. Aguilar yells out, "I'm dying." One of the deputies yells at Aguilar, "Give me your fucking hands!" Repeated hostilities are directed at the deputies from unknown spectators. The deputies continue to hold Aguilar down and eventually handcuff him. Words are exchanged between unknown individuals about Aguilar having a gun; someone asks, "He's got another gun or what?" Later, in response to a spectator, Ruiz says, "That's his fucking gun." Aguilar continues to move and Ruiz orders him to, "Stop moving!"

Within a few minutes, sirens are heard and additional deputies arrive.[6] Several pedestrians arrive and are standing nearby; deputies clear the area and escort [redacted] away. The video ends with Ruiz still on top of Aguilar, holding his hands behind his back.

[redacted] recorded an additional video segment that shows paramedics tending to Aguilar, who is unresponsive and no longer moving. Aguilar was pronounced dead at the scene.

Another individual is shown in the video who appears to have recorded the incident, or a portion thereof, on a cell phone. Investigators have been unable to identify the individual nor obtain the video recording.

Postmortem Examination

On May 27, 2014, Deputy Medical Examiner Abubakr Marzouk performed a postmortem examination of Aguilar's remains. The examination revealed gunshot wounds to the back of the neck, left upper back, mid upper back, right thigh, left arm and left shoulder. The wounds to the back of the neck, left upper back, mid upper back are contact wounds where soot is present. No stippling was noted in any of the wounds.

Dr. Marzouk opined that Aguilar was likely shot four times and the wounds to the left arm and left shoulder were re-entry wounds from two of the other gunshots.

A toxicological examination of Aguilar's blood revealed the presence of metabolites of marijuana and methamphetamine.

[6] The first additional deputy is seen 4 minutes, 9 seconds into the recording.



Forensic Evidence

At the scene of the incident, investigators located a semiautomatic .45 caliber Taurus handgun which [redacted] took from Aguilar. The firearm contained six live rounds in the magazine. Investigators also located five 9mm discharged cartridge cases that had been discharged from Ruiz and [redacted] service weapons. A single live 9mm round was also found. At the time of the incident, both deputies were armed with department-issued 9mm Luger Smith and Wesson semiautomatic handguns.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense if it reasonably appears to the person claiming the right of self-defense that he actually and reasonably believed he was in imminent danger of great bodily injury or death. The belief in the need to defend oneself must be both actual and reasonable.

"[T]he rule is well established that one who, without fault, is placed under circumstances sufficient to excite the fears of a reasonable man that another designs to commit a felony or some great bodily injury and to afford grounds for a reasonable belief of imminent danger, may act upon those fears alone and may slay his assailant and be justified by appearances."[7]

In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent injury which appears to be imminent.[8]

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety."[9]

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation."[10]

The Fourth Amendment reasonableness test is, "an objective one: the question is whether the officer's actions are 'objectively reasonable' in light of the facts and circumstances confronting them."[11] The analysis must take into account the officer's perceptions as part of the totality of the circumstances.[12]

[7] *People v. Mercer* (1962) 210 Cal. App. 2d 153, 161.
[8] CALCRIM No. 3470.
[9] *People v Collins*, (1961) 189 Cal. App.2d 575.
[10] *Graham v. Conner*, (1989) 490 U.S. 386, 396-397.
[11] *Graham v. Connor* (Supra) 490 U.S. at 396.
[12] *Milstead v. Kibler* (1999) 1999 U.S. Dist Lexis 8380.

In *Graham*, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances" of the particular incident. "...Thus, under *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure."[13]

The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others."[14]

CONCLUSION

The evidence examined shows that on the morning of May 26, 2014, LASD Deputies [redacted] and Joe Ruiz were on patrol and saw Noel Aguilar riding a bicycle on the east sidewalk of Long Beach Boulevard. Aguilar looked in the deputies' direction and turned eastbound on East 69th Way. Ruiz followed Aguilar onto East 69th. Aguilar abandoned his bicycle and fled on foot; the deputies pursued him and ordered him to, "Stop!" Aguilar ignored the commands and ran while continuously grabbing his waistband. The deputies believed he was armed with a firearm. The deputies caught Aguilar in an alley to the rear of a nearby apartment complex and tackled him to the ground.

Aguilar's hands were underneath his body and the deputies ordered him to, "Give (me) your arms!" Aguilar refused to comply with the orders and struggled with the deputies as they attempted to restrain him. At some point during the struggle, [redacted] took a loaded handgun from Aguilar. [redacted] took hold of Aguilar's left arm and secured a handcuff on his left wrist. For a brief moment, Aguilar stopped struggling and [redacted] grabbed Aguilar's right arm. As [redacted] tried to place a handcuff on Aguilar's right wrist, Aguilar aggressively pulled his arm away and put it under his body. Despite [redacted] weight on top of him, Aguilar pushed himself off of the ground, dislodging [redacted] [redacted] struggled to control Aguilar's body. Suddenly, a metal object fell to the ground. Ruiz heard [redacted] say, "Gun," and believed Aguilar was reaching for a weapon. Ruiz pointed his firearm at Aguilar's stomach and felt Aguilar grab the weapon. Ruiz, believing that [redacted] was gaining possession of a gun, and in fear for his life and [redacted] life, fired a single round at Aguilar. The round missed Aguilar and struck [redacted] in the stomach.

[redacted] screamed, "Ah, I've been shot," and was suddenly in excruciating pain. Aguilar continued to struggle with the deputies who repeatedly told him to, "Stop." Aguilar refused to comply with their orders. Ruiz pointed his service weapon at Aguilar. Aguilar grabbed the barrel of the firearm and fought for control of the gun. Ruiz pulled the gun from Aguilar's grasp and shot Aguilar in the leg. Ruiz held his gun near Aguilar's midsection.

---

[13] *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.
[14] *Munoz v. City of Union City* (2004) 120 Cal. App. 4th 1077, 1102.



[redacted] was in distress after being shot. [redacted] believing that Aguilar shot him and had, again, gained control of a firearm and, in fear for his life, unholstered his service weapon and fired three shots at Aguilar. Aguilar sustained multiple gunshot wounds and died as a result of his injuries.

Based on the available evidence, Ruiz' belief in the need to use deadly force was reasonable. Aguilar fought with the deputies and refused to comply with their orders to stop resisting. During the altercation, [redacted] took a firearm from Aguilar. Despite repeated attempts to get Aguilar to comply and stop resisting, Aguilar continued to struggle with the deputies. The deputies secured a single handcuff on Aguilar's left wrist. As [redacted] attempted to secure Aguilar's right wrist, Aguilar forcefully pushed himself off the ground, dislodging [redacted] Ruiz heard [redacted] say, "Gun." Ruiz' firearm was pointed at Aguilar's stomach and Ruiz felt Aguilar grab the gun. Based on the circumstances, Ruiz reasonably believed that Aguilar was gaining control of a firearm and Ruiz fired in self-defense and defense of [redacted] Ruiz' shot accidentally struck [redacted] and Aguilar continued to struggle.

The deputies ordered Aguilar to, "Stop," but he refused to do so. Aguilar grabbed Ruiz' gun a second time and fought for control of the weapon. Ruiz pulled the gun from Aguilar's grasp and, in fear for his life and his partner's life, Ruiz fired a second round that struck Aguilar in the leg. Under the circumstances, Ruiz' fear was reasonable.

[redacted] belief in the need to use deadly force was also reasonable. At some point early in the struggle with Aguilar, [redacted] recovered a loaded gun and, for a brief period of time, was able to gain control of Aguilar's wrists. As [redacted] attempted to handcuff Aguilar, Aguilar forcefully pulled away and pushed himself up off the ground. [redacted] of large stature, was dislodged and struggled to control Aguilar. During the ensuing struggle, [redacted] was shot, accidentally, by his partner. [redacted] believed that Aguilar had gained control of a handgun and had shot him. Under the circumstances, that mistaken belief was reasonable.

Despite being shot, [redacted] continued to try to restrain Aguilar with non-lethal force. Aguilar continued to struggle with the deputies and grabbed Ruiz' firearm. Ruiz fired a second round that struck Aguilar in the leg. Almost immediately after the second shot was fired, [redacted] believing Aguilar had gained, or was about to gain, control of a firearm, and in fear for his life, shot Aguilar three times from close range. The location of the shots does not effect this evaluation. The fact that Aguilar was facing away from [redacted] at the time [redacted] fired does not affect the reasonableness of [redacted] belief in the need to defend himself and his partner.

Differences between the deputies' individual recollections of the order of events and the recorded video were considered in this evaluation. The video captures only a portion of the events, beginning after Aguilar is already on the ground and the deputies are on top of him. At the time the subject video begins, Ruiz already has his service weapon out and [redacted] has control over Aguilar's left wrist. Without question, a significant portion of the incident was unrecorded and, based on the deputies' statements, the struggle had been ongoing throughout their entire attempt to restrain Aguilar. Aguilar's vigorous efforts to resist the deputies were corroborated by independent witnesses.

Based on the evaluation set forth above, we conclude that Deputies [redacted] and Ruiz acted in lawful self-defense and defense of others when they used deadly force against Aguilar. We are therefore closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

GEOFFREY RENDON
Deputy District Attorney
(213)974-3888

c: Deputy [redacted] # [redacted]
Deputy Jose Ruiz, # [redacted]



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

April 7, 2016

Captain Steven Katz
Homicide Bureau
Los Angeles County Sheriff's Department
1 Cupania Circle
Monterey Park, California 91755

Re: J.S.I.D. File #14-0356
L.A.S.D. File #014-06662-2899-013

Dear Captain Katz:

The Justice System Integrity Division has reviewed the February 5, 2016 supplemental report submitted to our office by Detectives Karen Shonka and Wayne Holston regarding the deputy-involved shooting of Noel Aguilar. We also reviewed the additional video footage of the incident submitted by Detectives Shonka and Holston, as well as an edited video of the incident submitted by Mr. Aguilar's attorney, Angel Carrasco, Jr.

The newly submitted information, including the videos, is consistent with the original material reviewed that formed the basis of our opinion that Deputies [redacted] and Ruiz acted in lawful self-defense and defense of others as articulated in our letter to Captain Rod Kusch dated February 23, 2105. Therefore, we will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

James Garrison, Head Deputy
Justice System Integrity Division

Hall of Justice
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
(213) 974-3888
Fax: (213) 626-5125
WEBSITE: http://da.co.la.ca.us

DISPOSITION WORKSHEET

Re: SH2355927 / FO2385633 / IV2404481
Subject: [redacted], #[redacted]
Investigator: Kimberly Mendoza, Internal Affairs Bureau
Advocate: Julia M. Valdes, Advocate

DISPOSITION OF CHARGES

The following potential charges were prepared by the Advocacy Unit. Please indicate your disposition of the potential charges, and put any additional sustained charges (with reference to the investigation) on attached sheet(s).

Potential Charge(s):

The evidence in this investigation supports the following charges:

1. That in violation of Manual of Policy and Procedures Section(s) 3-01/050.10, Performance to Standards; and/or 3-01/030.10, Obedience to Laws, Regulations and Orders (as it relates to 5-09/220.50, Foot Pursuits; and/or 3-10/150.00, Tactical Incidents), on or about May 26, 2014, while on duty, Subject [redacted] failed to conform to the work standards established for his rank of a deputy sheriff and/or failed to follow Department policies when he was faced with a tactical dilemma and engaged in a foot pursuit of Noel Aguilar, who was armed with a firearm as evidence by, but not limited to the following;

    a. failing to broadcast on a Sheriff's Communications Center access channel and advise Sheriff's Communication Center personnel and/or Compton patrol station personnel that he and Deputy Jose Ruiz were in a foot pursuit of Noel Aguilar; and/or,

    b. failing to maintain visual contact of and/or "partner splitting" from Deputy Ruiz while in pursuit of Noel Aguilar; and/or,

    c. failing to exercise sound officer safety skills of cover and concealment, believing Suspect Noel Aguilar was armed with a firearm; and/or,

    d. failing to remain cognizant of his location while engaged in a foot pursuit; and/or,

    e. closing a safe distance and engaging in close-quarter combat with an armed suspect by way of tackling Noel Aguilar, resulting in placing himself and Deputy Ruiz in a tactical dilemma and subsequent deadly use of force.

Evidence Reference:

____

Defenses/Conflicting Evidence:

____

<u>Disposition:</u>

__X__ **Charge founded as delineated**
_____ **Charge founded as modified**
_____ **Charge unresolved**
_____ **Charge unfounded**

<u>Discipline Assessment</u>

<u>Review of Applicable Guidelines for discipline Section:</u>

The Department's Guidelines for Discipline (Revised December 14, 2009) lists the following Analogous misconduct with associated disciplinary penalties:

Conduct	**Standard Discipline**
Obedience to Laws, Regulations and Orders	W/R to Discharge
Foot Pursuit	
Performance to Standards	W/R to 5 Days

<u>Determination of Discipline:</u>

Based upon the attached assessment of mitigating and aggravating factors, the following discipline has been determined to be appropriate. This discipline is subject to revision upon receipt of the subject's response of grievance.

_____ **Discharge**
_____ **Reduction in Rank**
_X__ **Suspension with loss of pay and benefits for __5__ days**
____ **Written Reprimand**
_____ **No discipline**

Assessment of Mitigating and Aggravating Factors:

The following describe the mitigating and aggravating factors in the determining the discipline in this investigation. Those factors include:

Intent	Truthfulness
Past Performance	Severity of Infraction
Degree of Culpability	Acceptance of Responsibility
Disciplinary History	Other Factors

Management has considered the subject's performance, which is documented in the Subject's Department personnel file, and those documents not contained in that file which are attached to the disposition worksheet.

DISPOSITION WORKSHEET

Re:	SH 2355927 / FO 2385633 / IV 2404481
Subject:	Jose Ruiz, #[redacted]
Investigator:	Kimberly Mendoza, Internal Affairs Bureau
Advocate:	Julia M. Valdes, Advocate

DISPOSITION OF CHARGES

The following potential charges were prepared by the Advocacy Unit. Please indicate your disposition of the potential charges, and put any additional sustained charges (with reference to the investigation) on attached sheet(s).

Potential Charge(s):

The evidence in this investigation supports the following charges:

1. That in violation of Manual of Policy and Procedures Section(s) 3-01/050.05, Performance of Duty; and/or, 3-01/050.10, Performance to Standards; and/or 3-01/030.10, Obedience to Laws, Regulations and Orders (as it relates to 2-02/090.10, Field Training Officers; and/or 5-09/220.50, Foot Pursuits; and/or 3-10/150.00, Tactical Incidents), on or about May 26, 2014, while on duty, Subject Ruiz failed to conform to the work standards established for his rank of a patrol trained deputy sheriff/training officer, and/or failed to direct and coordinate his efforts and that of his trainee, Deputy [redacted] in a manner which would have established and maintained the highest standard of efficiency when he was faced with a tactical dilemma that resulted in deadly force as evidence by, but not limited to the following;

    a. placing Deputy [redacted] at a tactical disadvantage when he (Deputy Ruiz) used their patrol vehicle to block Noel Aguilar's path as he attempted to avoid apprehension; and/or,

    b. failing to broadcast on a Sheriff's Communications Center access channel and advise Sheriff's Communication Center personnel and/or Compton patrol station personnel that he and Deputy [redacted] were engaged in a foot pursuit of an Noel Aguilar, who was armed with a firearm; and/or,

    c. failing to maintain visual contact of and/or "partner splitting" from Deputy [redacted] while in pursuit of Noel Aguilar; and/or,

d. failing to coordinate response for the purpose of isolating and containing Noel Aguilar as he attempted to avoid apprehension, detention, and/or arrest, causing greater danger to himself and/or Deputy [redacted] while involved in a tactical dilemma; and/or,

e. failing to exercise sound officer safety skills of cover and concealment while in foot pursuit of Noel Aguilar; and/or,

f. failing to remain cognizant of his and Deputy [redacted] location while involved in a foot pursuit and subsequent deadly use of force incident; and/or,

g. failing to maintain efficient management and oversight of Deputy [redacted] a patrol trainee, as Deputy [redacted] chased Noel Aguilar between two structures creating a potential kill zone for Deputy [redacted] and/or,

h. failing to maintain effective communication with Deputy [redacted] while engaged in a tactical dilemma that lead to a deadly use of force; and/or,

i. failing to exercise complete command and control, including directing the actions of Deputy [redacted] during a tactical dilemma.

Evidence Reference:

____

Defenses/Conflicting Evidence:

____

Disposition:

__X__ **Charge founded as delineated**
_____ **Charge founded as modified**
_____ **Charge unresolved**
_____ **Charge unfounded**

Discipline Assessment

Review of Applicable Guidelines for discipline Section:

The Department's Guidelines for Discipline (Revised December 14, 2009) lists the following Analogous misconduct with associated disciplinary penalties:

Conduct	Standard Discipline
Obedience to Laws, Regulations and Orders	W/R to Discharge
Foot Pursuit	
Training Officers	
Tactical Incidents	
Performance of Duty	
Performance to Standards	W/R to 5 Discharge

Determination of Discipline:

Based upon the attached assessment of mitigating and aggravating factors, the following discipline has been determined to be appropriate. This discipline is subject to revision upon receipt of the subject's response of grievance.

_____ **Discharge**
_____ **Reduction in Rank**
_X__ **Suspension with loss of pay and benefits for __15__ days**
____ **Written Reprimand**
_____ **No discipline**

Assessment of Mitigating and Aggravating Factors:

The following describe the mitigating and aggravating factors in the determining the discipline in this investigation. Those factors include:

Intent	Truthfulness
Past Performance	Severity of Infraction

Degree of Culpability	Acceptance of Responsibility
Disciplinary History	Other Factors

Management has considered the subject's performance, which is documented in the Subject's Department personnel file, and those documents not contained in that file which are attached to the disposition worksheet.